



Capital One Financial Corporation

1680 Capital One Drive
McLean, VA 22102
(703) 720-1000

January 12, 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
Office of the Secretary
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551
Attention: Docket No. R-1171

Federal Trade Commission
Office of the Secretary
Room 159-H
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Attention: Interim Final Rules for the FACT Act, Project No. P044804

Re: Interim Final Rules for the Fair and Accurate Credit Transactions Act of 2003 –
Comments of Capital One Financial Corporation

Dear Ladies and Gentlemen:

Capital One Financial Corporation (“Capital One”) appreciates the opportunity to comment on the Joint Interim Final Rules (“Interim Rule”) promulgated by the Board of Governors of the Federal Reserve System and the Federal Trade Commission (collectively, the “Agencies”), which establish the effective dates for those provisions of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”) that determine the relationship between state law and the Fair Credit Reporting Act (“FCRA”) and for those provisions that authorize agency rulemakings or other implementing agency action.

Capital One had 46.4 million customers and \$67.3 billion in managed loans outstanding, as of September 30, 2003. A Fortune 200 company, Capital One is one of the largest providers of MasterCard and Visa credit cards in the world. Capital One also offers automotive financing through its Capital One Auto Finance business. To conduct its consumer lending businesses and successfully manage the cost of credit, Capital One relies significantly on the uniformity provided by the FCRA, as amended by the FACT Act.

Capital One supports the Agencies' determination that December 31, 2003 is the appropriate effective date for section 711(3), which removes the sunset on the existing FCRA preemption provisions, as well as for the provisions of the FACT Act authorizing rulemakings or other agency implementing actions that do not include a specified effective date. Capital One also supports the Agencies' determination that December 31, 2003 is the appropriate effective date for provisions of the FACT Act designed to prevent or mitigate the effects of identity theft, as set forth in section 711(2), and for the additional preemption provisions in sections 151(a)(2), 212(e), 214(c) and 311(b) of the Act.

Importance of Preventing the Sunset of the FCRA's Existing Preemption Provisions

The Interim Rule establishes December 31, 2003 as the effective date for section 711 of the FACT Act, pursuant to the Act's directive requiring the Agencies to prescribe joint regulations establishing effective dates for the provisions of the Act for which no effective date is specified. Section 711 of the FACT Act, in part, permanently reauthorizes the existing FCRA preemption provisions scheduled to sunset on January 1, 2004. In adopting the Interim Rule without advance notice or public comment, the Agencies noted that "[d]elaying final action on these provisions of the FACT Act would undermine the purpose of these provisions and is likely to provoke substantial confusion about the applicability of some state laws in areas that Congress has determined should be governed by uniform nationwide standards."

We strongly support the Agencies' determination to establish December 31, 2003 as the effective date for section 711 in order to prevent the sunset of the existing FCRA preemption provisions. Any delay in final action that would allow the existing FCRA preemption provisions to sunset, even briefly, would contradict the clear intent of Congress. The legislative history of the FACT Act makes it abundantly clear that Congress intended to remove the sunset provision applicable to the existing FCRA preemption provisions and to permanently reauthorize these preemption provisions.¹ We believe that the FCRA's existing preemption provisions help to preserve and bolster an efficient national credit market. Moreover, given the close proximity between the enactment of the FACT Act and the impending sunset date for the existing FCRA preemption provisions, it would be impractical for the Agencies to provide notice and comment before establishing the effective date for this section. Accordingly, the Interim Rule, which establishes December 31, 2003 as the effective date for the existing FCRA preemption provisions scheduled to sunset on January 1, 2004, is clearly appropriate.

Importance of a Uniform National Standard to Control FACT Act Preemption Provisions

Capital One also supports the proposed establishment of December 31, 2003 as the effective date for the provisions of the FACT Act designed to prevent or mitigate the effects of identity theft, as set forth in section 711(2), and for the additional preemption provisions in sections 151(a)(2), 212(e), 214(c) and 311(b) of the Act. We believe that the effective date established for these provisions is also important because of the potential uncertainty that could arise concerning the time when existing state laws, and states laws that will soon become effective, are preempted.

¹ See 149 Cong. Rec. H12,217 (daily ed. Nov. 21, 2003) (statement of Rep. Kelly that "[a]t the heart of the [FACT Act] is the permanent reauthorization of the Fair Credit Reporting Act").

Preemption of Marketing Solicitations Based on Affiliate Information and Risk-Based Pricing Notices

We believe that establishing December 31, 2003 as the effective date for the preemptions provided by the FACT Act for the new requirements concerning marketing solicitations based on affiliate information (§ 214(c)) and risk-based pricing notices (§ 311(b)) also is clearly appropriate. These sections of the FACT Act expand upon existing FCRA requirements that already preempt state law, and have done so since 1996. We believe that the subject matter covered by these two provisions is covered by the existing FCRA preemptions on affiliate sharing and adverse action notices and that the new FACT Act preemptions were added merely for clarity. Accordingly, we believe that because the existing FCRA preemptions must be effective on January 1, 2004, the sections expanding upon existing FCRA preemption provisions also must receive preemptive force by December 31, 2003.

Agency Rulemaking or Implementing Action Provisions

We also support the Agencies' determination to establish December 31, 2003 as the effective date for those provisions of the FACT Act that authorize agency rulemakings or authorize other implementing agency action, but do not include an effective date (collectively, "Regulatory Provisions"). In adopting the Interim Rule without advance public notice or comment, the Agencies note that "[e]stablishing an early effective date for these regulatory provisions would allow the agencies to begin immediately to perform their responsibilities under the FACT Act." As most provisions of the FACT Act must become effective within one year of enactment, it is necessary for the agencies to begin their regulatory duties immediately. Accordingly, the Interim Rule that establishes December 31, 2003 as the effective date for the Regulatory Provisions, without advance public notice or comment, is clearly appropriate.

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Capital One appreciates the opportunity to submit comments on this important topic. If you have any questions concerning these comments, or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me at (703) 720-2266.

Sincerely,

/s/ Andres L. Navarrete

Andres L. Navarrete
Director and Associate General Counsel,
Regulatory Affairs
Capital One Financial Corporation